

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

V.

JC Realty Investment LLC, a California Limited Liability Company; and Does 1-10,

Defendants.

Case No.

Complaint For Damages And Injunctive Relief For Violations Of: Americans With Disabilities Act; Unruh Civil Rights Act

Plaintiff Scott Johnson complains of JC Realty Investment LLC, a California Limited Liability Company; and Does 1-10 (“Defendants”), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant JC Realty Investment LLC owned the real property located at or about 2901 Moorpark Ave, San Jose, California, between January 2020

1 and August 2020.

2 3. Defendant JC Realty Investment LLC owns the real property located at
3 or about 2901 Moorpark Ave, San Jose, California, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein,
9 including Does 1 through 10, inclusive, is responsible in some capacity for the
10 events herein alleged, or is a necessary party for obtaining appropriate relief.
11 Plaintiff will seek leave to amend when the true names, capacities,
12 connections, and responsibilities of the Defendants and Does 1 through 10,
13 inclusive, are ascertained.

14

15 **JURISDICTION & VENUE:**

16 5. The Court has subject matter jurisdiction over the action pursuant to 28
17 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 6. Pursuant to supplemental jurisdiction, an attendant and related cause
20 of action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California's Unruh Civil Rights
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26

27 **FACTUAL ALLEGATIONS:**

28 8. Plaintiff went to 2901 Moorpark Business Plaza in January 2020, March

1 2020, July 2020 and August 2020 with the intention to avail himself of its
2 services motivated in part to determine if the defendants comply with the
3 disability access laws.

4 9. 2901 Moorpark Business Plaza is a facility open to the public, a place of
5 public accommodation, and a business establishment.

6 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
7 to provide wheelchair accessible parking in conformance with the ADA
8 Standards as it relates to wheelchair users like the plaintiff.

9 11. 2901 Moorpark Business Plaza provides parking to its customers but
10 fails to provide wheelchair accessible parking.

11 12. One problem that plaintiff encountered is that there was no access aisle
12 that accompanied the ADA parking stall.

13 13. Plaintiff believes that there are other features of the parking that likely
14 fail to comply with the ADA Standards and seeks to have fully compliant
15 parking available for wheelchair users.

16 14. On information and belief the defendants currently fail to provide
17 wheelchair accessible parking.

18 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
19 personally encountered these barriers.

20 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
21 wheelchair accessible facilities. By failing to provide accessible facilities, the
22 defendants denied the plaintiff full and equal access.

23 17. The failure to provide accessible facilities created difficulty and
24 discomfort for the Plaintiff.

25 18. The defendants have failed to maintain in working and useable
26 conditions those features required to provide ready access to persons with
27 disabilities.

28 19. The barriers identified above are easily removed without much

1 difficulty or expense. They are the types of barriers identified by the
2 Department of Justice as presumably readily achievable to remove and, in fact,
3 these barriers are readily achievable to remove. Moreover, there are numerous
4 alternative accommodations that could be made to provide a greater level of
5 access if complete removal were not achievable.

6 20. Plaintiff will return to 2901 Moorpark Business Plaza to avail himself of
7 its services and to determine compliance with the disability access laws once
8 it is represented to him that 2901 Moorpark Business Plaza and its facilities
9 are accessible. Plaintiff is currently deterred from doing so because of his
10 knowledge of the existing barriers and his uncertainty about the existence of
11 yet other barriers on the site. If the barriers are not removed, the plaintiff will
12 face unlawful and discriminatory barriers again.

13 21. Given the obvious and blatant nature of the barriers and violations
14 alleged herein, the plaintiff alleges, on information and belief, that there are
15 other violations and barriers on the site that relate to his disability. Plaintiff will
16 amend the complaint, to provide proper notice regarding the scope of this
17 lawsuit, once he conducts a site inspection. However, please be on notice that
18 the plaintiff seeks to have all barriers related to his disability remedied. See
19 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
20 encounters one barrier at a site, he can sue to have all barriers that relate to his
21 disability removed regardless of whether he personally encountered them).

22

23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
24 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint.

1 23. Under the ADA, it is an act of discrimination to fail to ensure that the
2 privileges, advantages, accommodations, facilities, goods and services of any
3 place of public accommodation is offered on a full and equal basis by anyone
4 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
5 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 6 a. A failure to make reasonable modifications in policies, practices,
7 or procedures, when such modifications are necessary to afford
8 goods, services, facilities, privileges, advantages, or
9 accommodations to individuals with disabilities, unless the
10 accommodation would work a fundamental alteration of those
11 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 12 b. A failure to remove architectural barriers where such removal is
13 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
14 defined by reference to the ADA Standards.
- 15 c. A failure to make alterations in such a manner that, to the
16 maximum extent feasible, the altered portions of the facility are
17 readily accessible to and usable by individuals with disabilities,
18 including individuals who use wheelchairs or to ensure that, to the
19 maximum extent feasible, the path of travel to the altered area and
20 the bathrooms, telephones, and drinking fountains serving the
21 altered area, are readily accessible to and usable by individuals
22 with disabilities. 42 U.S.C. § 12183(a)(2).

23 24. When a business provides parking for its customers, it must provide
24 accessible parking.

25 25. Here, accessible parking has not been provided in conformance with the
26 ADA Standards.

27 26. The Safe Harbor provisions of the 2010 Standards are not applicable
28 here because the conditions challenged in this lawsuit do not comply with the

1 1991 Standards.

2 27. A public accommodation must maintain in operable working condition
3 those features of its facilities and equipment that are required to be readily
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 28. Here, the failure to ensure that the accessible facilities were available
6 and ready to be used by the plaintiff is a violation of the law.

7

**8 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
9 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
10 Code § 51-53.)**

11 29. Plaintiff repleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
14 that persons with disabilities are entitled to full and equal accommodations,
15 advantages, facilities, privileges, or services in all business establishment of
16 every kind whatsoever within the jurisdiction of the State of California. Cal.
17 Civ. Code § 51(b).

18 30. The Unruh Act provides that a violation of the ADA is a violation of the
19 Unruh Act. Cal. Civ. Code, § 51(f).

20 31. Defendants’ acts and omissions, as herein alleged, have violated the
21 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
22 rights to full and equal use of the accommodations, advantages, facilities,
23 privileges, or services offered.

24 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
25 discomfort or embarrassment for the plaintiff, the defendants are also each
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
27 (c).)

28 33. Although the plaintiff encountered frustration and difficulty by facing

1 discriminatory barriers, even manifesting itself with minor and fleeting
2 physical symptoms, the plaintiff does not value this very modest physical
3 personal injury greater than the amount of the statutory damages.

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PRAYER:

10 Wherefore, Plaintiff prays that this Court award damages and provide
11 relief as follows:

12 1. For injunctive relief, compelling Defendants to comply with the
13 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
14 plaintiff is not invoking section 55 of the California Civil Code and is not
15 seeking injunctive relief under the Disabled Persons Act at all.

16 2. Damages under the Unruh Civil Rights Act, which provides for actual
17 damages and a statutory minimum of \$4,000 for each offense.

18 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
19 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

20

21 Dated: September 14, 2020 CENTER FOR DISABILITY ACCESS

22

23 By:



24
25 Amanda Seabock, Esq.
26 Attorney for plaintiff
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